SUPREME COURT, U. S.

FEB 20 1970

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NO. 1181

LESTER G. MADDOX, *et al.*,
Appellants,

v.

BEN W. FORTSON, JR., *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS OR AFFIRM ON BEHALF OF JAMES H. GRAY, AS CHAIRMAN OF THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE AND AS CHAIRMAN OF THE GEORGIA STATE DEMOCRATIC EXECUTIVE SUB-COMMITTEE; JAMES H. GRAY, JACK N. GUNTER, SAM T. TURNIPSEED, JR., W. D. TRIPPE, JUDGE E. ALVIN FOSTER, MRS. GLENN M. HOWELL, CONRAD SECHLER, THOMAS T. IRVIN, LAMAR SIZEMORE, C. C. PERKINS, FRANK BLANKENSHIP, ALLAN WOODALL, JR., JOE C. UNDERWOOD, AND VALENE BENNETT, EACH AS A MEMBER OF THE GEORGIA STATE DEMOCRATIC EXECUTIVE SUB-COMMITTEE; JACK N. GUNTER, AS SECRETARY OF THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; JOSEPH A. SPORTS, AS EXECUTIVE DIRECTOR OF THE DEMOCRATIC PARTY OF GEORGIA; GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; AND DEMOCRATIC PARTY OF GEORGIA

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February, 1970

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Appellees, Democratic Party of Georgia, et al., respectfully move the Court to dismiss the appeal, or, in the alter-

native, to affirm the judgment of the Supreme Court of Georgia on the grounds that the decision sought to be reviewed is correct, and that it is manifest that the appeal does not present a substantial federal question.

THE QUESTION PRESENTED

The question presented on Motion to Dismiss or Affirm is whether or not appellants have presented any proper constitutional attack on a provision in a State Constitution limiting the right of an elected official in the executive branch of government to unlimited succession in office.

STATEMENT

The Honorable Lester G. Maddox currently serves as Governor of the State of Georgia. His term of office will expire in January of 1971. The Constitution of Georgia provides that a Governor cannot serve successive terms (Ga. Const. Art. V, Sec. I, Par. I; Ga. Code Ann. 2-3001; appellants' appendix C, p. 1-c). Appellant Maddox desires to run for the office of Governor in 1970, and the other seven appellants wish to vote for him for that office.

The Trial Court held the limitation on succession to be valid under the United States Constitution, and the Supreme Court of Georgia affirmed that decision.

ARGUMENT

The case at bar presents, in one sense, a fundamental question pertaining to the American system of government. Unfortunately for the appellants, the question has been answered adversely to their present interests. That question is whether or not a State may impose rational, non-discriminatory qualifications on the right to hold public office.

Appellants' attempted use of current legal phraseology,

such as "invidious discrimination," "compelling state interest," and their paraphrasing of language from cases such as *Reynolds v. Sims*, 377 U.S. 533 (1964) and *Williams v. Rhodes*, 393 U.S. 23 (1968), which involved concrete issues of discrimination *within* the framework of our political system, obscure the position actually asserted in the Appeal. That assertion is:

(a) Anyone should be able to vote for anyone for any office; and,

(b) Even if the people can impose limitations on the right to hold office, the *State* must "show" a "compelling state interest" (whatever that is) to support such a limitation; and,

(c) Whether or not a "compelling state interest" is shown depends upon whether or not one agrees with that particular point of view.

We submit that their approach presents a breakthrough in constitutional litigation.

This Court has previously held that States may impose qualifications for those who seek public office. *Lassiter v. Northampton County Bd. of El.*, 360 U.S. 45, 50-51 (1959). Age, lack of residence and a criminal record obviously deprive a good many people of the right to seek public office, and they also deprive voters of the opportunity to vote for such persons. Therefore, it cannot constitutionally be said that anyone may vote for anyone for anything.

As to the necessity of a state showing a "compelling interest" to uphold a qualification, the cases involving that concept should be examined. In *Carrington v. Rash*, 380 U.S. 89 (1965), the Texas Constitution simply provided that servicemen could not acquire legal residence in the State for

serve purposes. Apparently the State felt that making an actual determination of the facts was just too much trouble. The Court, quite properly, held, at p. 90:

> "States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State."

In *Kramer v. Union Free School District*, 395 U.S. 621 (1969), a New York statute restricted the franchise in certain school district elections to:

> "(a) those who owned or leased real property;
>
> "(b) their spouses; or
>
> "(c) parents of schoolchildren."

This Court held that limitations on the right to vote should be closely scrutinized, and the appellees were simply unable to relate the limitations to the ability to choose wisely or to any other proper public purpose. In *Turner v. Fouche*, — U.S. —, 38 L. W. 4088 (1970), a Georgia statute required that members of school boards be "freeholders", and no one, including the State of Georgia, could think of a single reason why such a qualification served any rational interest or useful purpose. Unfortunately enough, this Court, in *Turner v. Fouche*, specifically failed to utilize the "compelling State interest" test, and instead applied a test based upon rationality. *Turner v. Fouche*, — U.S. —, 38 L. W. 4091.

Let us turn, then, to the rationality, or lack of it, of the provision of the Georgia Constitution that limits succession. The Appellants have asserted, at page 19 of their Motion to Advance and Jurisdictional Statement, that the prohibition is a "political gimmick" that serves no useful purpose. Indeed, it is not unusual, or even inappropriate, for the incumbent to refuse to take such a position. The incumbent's desire

to run again, however, is hardly a constitutional justification for an attack. At the Georgia Constitutional Convention of 1877, a certain provision of the proposed document would have taken from Governor Colquitt a portion of his term. Administration leaders advanced several arguments against this provision, and a Mr. Holcombe remarked as follows:

> "I tell you that if we cannot make a constitution that can be adopted with the officeholders fighting it, it ought not to be ratified." *Small's Debates, Proceedings of the Constitutional Convention held in Atlanta, Georgia, 1877; Constitution Publishing Company, Atlanta, Georgia, 1877.*

The justification for such a prohibition, is simply this: That the people of Georgia feel that an incumbent should not be allowed to utilize his natural advantages while in office to run for reelection or to perpetuate a political dynasty. As pointed out in other Briefs, twenty-five states have either one term or two term limitations on the office of Governor. In addition, the Twenty-Second Amendment to the Constitution of the United States was adopted after World War II, placing a two-term limit on U.S. Presidents. These facts alone are adequate justification for the Georgia provision.

Neither the lower court nor the trial court in this case held that the State, under the Federal Constitution, had complete and unlimited power to set qualifications for public office. Indeed, the Supreme Court of Georgia cited *Taylor and Marshall v. Beckham*, 178 U.S. 548, pp. 570-1 (1899) as follows:

> "It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers, the tenure of their offices, the manner of their election, and the grounds on which, the tribunals before

> which, and the mode in which, such affections shall be contested, should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States."

The particular qualification involved in this case violates no provision of the United States Constitution, in that it is clearly and concisely drawn, reaches only the person intended to be affected, and is related to a legitimate governmental purpose. That purpose, as aforestated, is to prevent the incumbent from using his awesome power to demolish political opponents. Indeed, it might be said that such a prohibition helps to achieve equality among candidates in the political arena.

In a recent book explaining the techniques of the new politics, it is pointed out that the four essentials for a modern political campaign are money, television, experts and time. Perry, *The New Politics: The Expanding Technology of Political Manipulation*, Clarkson N. Potter, Inc., New York, 1968, p. 136. The incumbent's natural advantages in these areas are obvious. Interest groups which can be directly affected by action of an incumbent Governor can provide the money. The position of Governor itself guarantees access to television and other media, and where else but in government itself do you find experts in political manipulation with the time for adequate planning of a campaign. It is submitted that for these reasons, in addition to the historical justification for the provision referred to in Appellant's Motion to Advance and Jurisdictional Statement, that Georgia's Constitutional prohibition against succession in the office of Governor is valid and constitutionally permissible.

CONCLUSION

The decision below is correct, and the applicable constitutional provisions were adequately dealt with both by the Trial Court and the Supreme Court of Georgia. The question involved in this case is so unsubstantial as not to warrant further argument, and the public interests dictate a dismissal of this appeal or an affirmance of the judgment entered in this case by the Supreme Court of Georgia.

Respectfully submitted,

LAMAR W. SIZEMORE

PAUL L. HANES

A PROOF OF SERVICE

I, Lamar W. Sizemore, hereby certify that I am of counsel for the Appellees Democratic Party of Georgia, et al., that I am a member of the Bar of the Supreme Court of the United States, and that on February ____, 1970, I served the within and foregoing Motion to Dismiss or Affirm upon the Appellants, by mailing true copies thereof to their counsel of record, Tully M. Bond, Jr., Esquire, 317 Walnut Street, Macon, Georgia 31201, his post office address, first class postage prepaid.

I further certify that all parties required to be served have been served.

This ____ day of February, 1970.

LAMAR W. SIZEMORE
Of Counsel